

The Applicants' starting block contains foot pedals that are much wider than usual. The foot pedals contain distance markings in metric units or English units to enable the runner to place the feet at precisely the desired width and to make a faster start in a race.

2. The Combination Of References Is Improper

The Applicants submit that the combination of Newton, Jr. and Outlaw is improper because nothing in the references teaches or suggests the combination. It is black letter law that combining references is proper only if there is a teaching or motivation to combine the references. As stated in *Ecolochem, Inc. v. Southern California Edison Company*, 227 F.3d 1361 (Fed. Cir. 2000),

Our case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. [Citing *In re Dembiczak*, 175 F.3d 994, 999]. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight.”

Newton, Jr. discloses a starting block with foot pedals containing two surfaces. One surface (44) is used with non-spiked shoes and the other surface (46) is used with spiked shoes. The surface for spiked shoes contains three openings (50) which receive the spikes. It can be seen that these openings are relatively narrow and that they *fix* the placement of the feet. Thus, the foot pedals of the Newton, Jr. starting block do not allow *any* variation in the width of the runner’s feet. There is certainly no teaching or suggestion that a variation in width is desirable. Accordingly, Newton, Jr. teaches *away* from the Applicants’ starting block that facilitates placement of the feet at varying widths.

Outlaw discloses a platform for teaching a baseball player to take the optimal stride when batting. The Examiner states that the Outlaw device contains two foot platforms, but the Applicants disagree. The Applicants believe the device contains a single platform upon which both feet are placed. More importantly, the Outlaw device has nothing to do with track and field.

Without any teaching or suggestion in Newton, Jr. that there is any reason for varying the width of foot placement, there is no reason to combine it with a completely unrelated patent dealing with hitting a baseball. The only link between Newton, Jr. and Outlaw is that provided by the Applicants' own disclosure. As the Court of Appeals for the Federal Circuit has made clear, the use of hindsight to combine prior art references is improper.

3. Outlaw Is Not Analogous Art

The Applicants further submit that Outlaw is not analogous art. It is well established that a Section 103 reference must be in an art analogous to the claimed invention. More specifically, a cited reference must either be in the field of the inventor's endeavor or reasonably pertinent to the specific problem with which the inventor was involved. *See, e.g., In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986). As previously mentioned, the Outlaw device is used to teach baseball players to make an optimal stride when hitting a baseball. Making a sideways stride when hitting a baseball has nothing to do with making a forward start in a race.

The classifications of these inventions reinforce the fact that they are not analogous. The Newton, Jr. starting block is currently classified in Class 482 (exercise devices). The Outlaw platform is classified in Class 434 (education) and the field of search included several subclasses in Class 473 (games using a tangible projectile). The Applicants suspect that the only way the Examiner found the Outlaw patent was by doing a keyword search. In short, the Outlaw platform is not in the field of the inventors' endeavor (it is not a starting block) nor is it reasonably pertinent to the specific problem with which the inventors were involved (making an optimal start in a foot race).

In view of the amendments and the above remarks, allowance of claims 1, 2, 4, and 5 is requested.

Respectfully submitted,

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CERTIFICATE OF MAILING

Philip L. Bateman certifies that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 20, 2005.

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COMPLETE LISTING OF ALL CLAIMS
WITH CURRENT STATUS AND MARKINGS TO SHOW CHANGES

1. (Previously amended) A starting block for a runner in a track event, the starting block comprising: (a) a rail; and (b) a pair of foot pedal assemblies, one assembly connected to the left side of the rail and one assembly connected to the right side of the rail, each foot pedal assembly comprising a pad having a width of about five to twelve inches upon which a runner's foot is placed, each pad comprising distance markings in metric units or English units along its width to enable a runner to place his feet at precisely the desired width.

2. (Original) The starting block of claim 1 wherein the markings indicate the distance from the center point of the rail or the distance between the feet.

3. (Cancelled)

4. (Previously amended) The starting block of claim 2 wherein the markings are molded into the surface of the pad.

5. (Original) The starting block of claim 4 wherein the markings indicate the distance between the feet in metric units.